DONALD L. HOWARD, LORENA L. HOWARD,
AND RONALD C. HOWARD

IBLA 86-1471 Decided September 27, 1988

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Goff Mine placer claim, ORMC 18206, abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Under 43 U.S.C. | 1744 (1982), an owner of an unpatented mining claim must file evidence of annual assessment work or a notice of intention to hold the claim prior to Dec. 31 of each year. Such filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30. Failure to file within the calendar year results in the claim being extinguished and therefore abandoned and void. In order to constitute a notice of intent to hold, a document filed with BLM must satisfy the requirements of 43 CFR 3833.2-3.

APPEARANCES: Donald L. Howard, Lorena L. Howard, and Ronald C. Howard, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Donald L. Howard, Lorena L. Howard, and Ronald C. Howard have appealed from a June 11, 1986, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Goff Mine placer claim (ORMC 18206) abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the claim during the calendar year of 1985.

After the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1701 (1982), an owner of an existing claim was required to file a copy of the notice of location for an existing claim within 3 years after the enactment of that statute. See 43 U.S.C. | 1744(b) (1982). The owners of the Goff Mine placer claim filed the required notice in 1979.

Under 43 U.S.C. | 1744(a) (1982), mining claimants are also required to file a copy of the evidence of annual assessment work or notice of intention to hold the claim prior to December 31 of each year. The owners filed the requisite documents through 1984. The required filing was not filed in 1985, and BLM issued a decision declaring the claim abandoned and void.

The present appellants acquired title to the claim by a quitclaim deed dated September 12, 1985. The deed was recorded with the county clerk and a copy was filed with BLM on October 21, 1985, with a typewritten notice entitled, "APPLICATION OF TRANSFER OF TITLE TO A MINING CLAIM." No other filing was made during the year.

[1] Under section 314(a) of FLPMA, 43 U.S.C. | 1744(a) (1982), the owner of an unpatented mining claim is required to file evidence of annual assessment work or a notice of intention to hold the mining claim prior to December 31 of each year. Such filing must be made each calendar year, i.e., on or after January 1, and before December 31. Under 43 U.S.C. | 1744(c) (1982), a failure to file is deemed conclusively to constitute an abandonment of the claim, and the claim is deemed to be abandoned and void. United States v. Locke, 471 U.S. 84 (1985).

Appellants' statement of reasons makes it clear that their failure to file was a result of their misunderstanding of the filing obligations. Appellants were under the mistaken impression that the filing of the quitclaim deed constituted a new location. They refer to an information pamphlet provided by BLM, which states that section 314 "requires the owner of claims and sites to file an affidavit or notice of intention to hold on or before December 30 of each year following the calendar year in which the claim was originally filed for record." (Emphasis added.) Appellants believed that the submission of the quitclaim deed constituted an original filing, and concluded that no affidavit of assessment work was required until 1986.

We do not doubt the sincerity of appellants' assertions, but fail to find a reasonable basis for their conclusion that their 1985 submission was the equivalent of an original location. When appellants submitted the copy of their quitclaim deed to BLM, they included a copy of the original location notice. The copy of the BLM information pamphlet appellants rely upon contains separate instructions for "original location" and "transfers of title." The deed and other material appellants submitted in 1985 clearly indicate an intent to record the transfer of title to an existing claim, rather than to record a new claim.

Page 2 of the pamphlet states that an "original location" must be recorded "within 90 days from the date of location shown in the body of the location certification." When appellants submitted the copy of the certificate of location for the claim with a 1933 location date, they should have recognized that the certificate of location could not be construed as an original filing. The date of location indicated otherwise. Had appellants carefully read the BLM pamphlet, they would have realized that they were filing notice of transfer of title to an existing location, and not recording an original location notice. We cannot treat appellants' submission as

the recordation of a new claim. In order to locate a new claim appellants would have been required to complete the acts of location required by state law, record the new notice of location with the county, and file a copy of that notice with BLM within 90 days after the date of location. The documents submitted by appellants in 1985 cannot be construed as a notice of location of a new claim.

Nor may we hold that their submission to BLM satisfied the requirement for filing a notice of intention for holding the claim. Although the quitclaim deed and application for transfer of title may be evidence of appellants' subjective intent to hold the claim, and the deed was recorded with both the state and with BLM, the deed fails to satisfy the other requirements of 43 CFR 3833.2-3. It was not signed by appellants and clearly did not show that those signing the deed continued to hold an interest in the claim. When the deed is coupled with the additional information filed with BLM in the form of an application for transfer of title, it may be argued that the set of documents met the BLM portion of recording requirements. However, the application was not recorded with the county.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge